IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 27049 of 2003

Between:

1 Chilakala Maduleti, S/o Pedda Timmaiah,
R/o Billalapuram, Nandyal Mandal.
2 Chilakala Rangaiah, S/o Chinatimmaih,
Billalapuram, Nandyal Mandal.
3 Emmadi Kasaiah, S/o Venkataiah,
R/o Billalapuram, Nandyal Mandal.
4 Chilakala Krishna Murthy, S/o Bodaiah,
R/o Billalapuram, Nandyal Mandal.

..... PETITIONERS

AND

The Assistant Commercial Tax Officer, Giddaluru, Prakasam District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction particularly in the nature of Writ of Mandamus declaring that the action of the Assistant Commercial Tax Officer, Giddaluru in Prakasam District in illegally and forciably collecting an amount of Rs.6,000/- towards tax and 'C' fees in amount Rs.3,000/- from agriculturist petitioners vide Money Receipt No.B.1904870 and B.1904178 dated 28-10-2003 pursuant to the proceedings dated 28-10-2003 in O.R.No.225/03-04 preceded by notices dated 27-10-2003 and 28-10-2003 said to have been issued on 28-10-2003 as illegal, arbitrary, high handed, improper, unjust and without jurisdiction and in as much as sale of agricultural produce by the petitioner farmers being statutory exempt from tax and thus violating Article -265 of the Constitution of India and accordingly directing the respondent to refund the amount of Rs.6,000/- as well as compounding fees of Rs.3,000/- to the petitioners with interest @ 18% from the date of collection till its refund and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case

Counsel for the Petitioners:MR.M.V.J.K.KUMAR

Counsel for the Respondent: Special GP FOR TAXES

The Court made the following :

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ORDER: (Per the Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties. With their consent the writ petition is disposed of at this stage.

The grievance of the petitioners is that they are agriculturists and were transporting certain quantity of turmeric from their village to a market committee, after obtaining certificate from Grama panchayat that the turmeric was being transported by the agriculturists themselves for the purposes of taking it to market committee. On interception by the tax authorities, the petitioners were served with show cause notices. Thereupon, according to them, one of them was made to sign on blank papers and then they were imposed with tax and penalty.

Respondent, on the other hand, contends that since it was a case of evasion of tax and on interception when the vehicle was stopped and turmeric was found, notices were served on the petitioners on 27-10-2003, and on 28-10-2003, one of the petitioners made a confessional statement and agreed to compound the offence. Therefore, tax liability of Rs.6000/- and penalty of Rs.3000/- was imposed on the petitioners for the transportation of turmeric.

We have seen the show cause notice. Show cause notice merely states,

1. The quantity of turmeric bags noted in the Transportation certificate are not tallied with the stocks denoted by the parties.

2. The names noted in the Transportation certificate are not tallied fully with the statements of the parties.

At no point the petitioners were asked or even informed that they had evaded payment of tax. Since no show cause notice was given with respect to any evasion of tax, the whole process gets vitiated. It is further submitted that subsequent to the show cause notices as above, another notice was given on 28-10-2003, wherein the tax authorities came to the conclusion that the ryots who were in the vehicle were not actually the ryots, but were kept in the vehicle just to mislead the tax authorities. As a matter of fact, it is the assertion of the petitioners that the turmeric has been cultivated by them in their lands and were transporting the same for the purpose of sale. No enquiry was conducted and there is nothing on record to show that the turmeric had been purchased by the petitioners from the village. Since the vehicle had been seized and the goods were also seized, there was no option with the petitioners but to make some payments to get the goods.

For these reasons, we do not find that the process by which tax was recovered and penalty was imposed on the petitioners, was fair and reasonable. Accordingly, we allow this writ petition and quash the impugned order imposing tax and penalty. The petitioners shall be entitled to refund of the amount in accordance with the provisions of the Sales Tax Act. No costs.

(BILAL NAZKI, J)

19-07-2004. (L.NARASIMHA REDDY, J)

mjl/ajr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Assistant Commercial Tax Officer, Giddaluru, Prakasam District.

2.2 CCs to G.P. for Commercial Tax (OUT)

3.2 CD copies.